

REMARKS

By this amendment, claims 1, 2, 4, 6-13 and 19-22 remain in this application.

In the Office Action, the Examiner rejected claims 1, 2, 6-13 and 19-22 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Applicants have amended independent claims 1 and 12 to delete reference to the second slot. The claims now recite, inter alia, a first slot, and therefore the rejection of the claims should be withdrawn.

Note that claims 1 and 12 continue to distinguish over the prior art. As pointed out in Applicants response filed November 29, 2007, the Konya patent is directed to a declotting device and as described throughout the patent, it applies a force against the wall to remove clots and does not teach or suggest a distal protection device performing a filtering function, i.e. capturing embolic material dislodged by a treatment device as recited in claim 1. Furthermore, one of ordinary skill looking to design an atraumatic distal protection device to capture embolic material dislodged during a surgical procedure by another device, such as a dilatation balloon, would not look to an aggressive device designed to dislodge clot which would include aggressive back and forth movement of the device against the wall to dislodge the clot. The device of the present invention is designed to capture clots which may undesirably become dislodged; Konya is actually designed to dislodge the clots.

Second, claim 1 as amended recites a slot formed in a portion of the sidewall of the cylindrical wall extending parallel to the longitudinal axis. The slot of claim 1 is positioned proximal of the distal end of the catheter to form an opening in the sidewall. In the retracted position, the flexible member is within the opening. Thus, it is protected in the retracted position.

In contrast, in the embodiment of Figure 5 of Konya referred to by the Examiner in the earlier rejection, the deformable members are moved by adjusting the distance of portions 22 and 24. This is achieved by sliding catheter 12 relative to member 14. Clips 32 and 34 secure the plurality of deformable members and are coupled to the catheter such as by crimping or other means (see col. 9, lines 55-60). Konya does not have a slot in the sidewall as defined in claim 1. Konya has a 360 degree gap between clips 32, in which the deformable members are positioned. The entire region where the loops are positioned is removed. The members and jacket are therefore not protected in the retracted position.

The Dieck patent does not satisfy the deficiencies of Konya.

Note that dependent claims 8, 19 and 20 recite that one loop is positioned distally of the other loop along the longitudinal axis. This feature is not shown in the symmetrically positioned loops of Konya as the loops lie in the same position along the longitudinal axis.

With respect to claim 12, Konya does not teach or suggest 1) the sidewall configuration with a slot forming an opening; 2) a distal protection device to capture embolic material dislodged by a treatment device; and 3) at least a portion of the filtering material being retracted within the catheter and unexposed during insertion of the catheter. Konya has a 360 degree gap and is designed to remove clots as discussed above with respect to claim 1. Further, since it has a 360 degree opening, the members 30 and jacket are exposed during insertion and thus could get tangled or damaged during insertion. Dieck does not cure the deficiencies of claim 12 as Dieck lacks the retraction for protection during insertion.

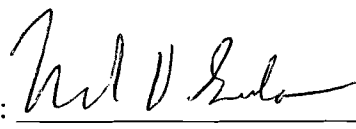
Consequently, for at least these reasons, claims 1 and 12 are believed patentable. Dependent claims 2, 4, 6-11, 19 and 21 and dependent claims 13, 20 and 22 are also believed patentable for at least the same reasons that claims 1 and 12 are believed patentable.

Applicants respectfully submit that this application is now in condition for allowance. Prompt and favorable reconsideration of the present application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

The Commissioner is hereby authorized to charge any additional fees which may be required for this Amendment, or credit any overpayment to Deposit Account No. **501567**. In the event any extensions of time are required with this Amendment, please treat this paper as a petition for such extension. The Commissioner is hereby authorized charge the required extension fee pursuant to 37 C.F.R. §1.17, to Deposit Account No. **501567**.

Respectfully submitted,

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